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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,728	06/27/2003	Neal C. Oliver	42P16530	6497

8791 7590 04/21/2008
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EXAMINER

DUONG, DUC T

ART UNIT	PAPER NUMBER
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2619

MAIL DATE	DELIVERY MODE
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04/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/607,728	Applicant(s) OLIVER ET AL.	
	Examiner Duc T. Duong	Art Unit 2619	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Wing F. Chan/
Supervisory Patent Examiner, Art Unit 2619
4/16/08

Continuation of 11. does NOT place the application in condition for allowance because: Regarding to applicant's argument on pages 2-3, that the specification on page 5 lines 2-10 teaches for "a computer-readable medium including content that when read by a computer causes the computer to...". In response, the examiner would like to point out the cited passage only discloses of an adjunct process may be various type of processors. However, there is nowhere in the the cited passage discloses of "a computer-readable media including content". There are no correlation between the cited passage and the claim limitation. Furthermore, applicant fails to discloses positively what the "computer-readable medium including content" encompass. Applicant's assertion that one skilled in the art would recognized that to run software on these types of processor would requires the software to be stored in a memory is incorrect since it is not always true that these types processors required software to run its functions. The processors could perform its various functions using logic gates. Thus, applicant's assertion is based only on hindsight reasoning. Regarding to applicant's argument page 4, Chen fails to teach for queuing the packets based on the flow bundle. In response, the examiner would like to direct applicant's attention to col. 8 lines 23-25. Herein, Chen discloses the packets are queued in the MMU 132 according to the packet switching fabric egress port and QP (noted the switching egress port and QP are a few of the parameters bundled together in an internal-use header during the classification stage, see col. 7 lines 23-45. Regarding to applicant's argument on page 5, Chen fails to teach for the order of operations as cited in the claims. In response, the examiner would like to direct applicant's attention to col. 7 lines 23-67. Herein, Chen discloses the operations for processing a packet as it arrive. First, a CAM look-up is performed that would results in determining a switching egress port SPort and destination port to be taken by the packet. Other packet classification parameters are also determined during the look-up such as traffic class or queuing priority that will be used to map the packet to one of the eight queues associated with the SPort. The look-up results are bundled in an internal-use header that will be use to queued the packet in MMU 132. The rate at which the packet move in of the queues is regulated by the traffic shapers 124-126. Thus, Chen indeed discloses an order of operations for processing the packet as cited in the claims. In response to applicant's argument that the traffic rate shapers in Lodha is used in another context, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Based on the reasons set forth here the rejections are maintained.